

§ 96-10. Collection of contributions.

(a) Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the Division, shall bear interest at the rate set under G.S. 105-241.21 per month from and after that date until payment plus accrued interest is received by the Division. An additional penalty in the amount of ten percent (10%) of the taxes due shall be added. The clear proceeds of any civil penalties levied pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Interest collected pursuant to this subsection shall be paid into the Special Employment Security Administration Fund. If any employer, in good faith, pays contributions to another state or to the United States under the Federal Unemployment Tax Act, prior to a determination of liability by this Division, and the contributions were legally payable to this State, the contributions, when paid to this State, shall be deemed to have been paid by the due date under the law of this State if they were paid by the due date of the other state or the United States.

(b) Collection. –

- (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the Division, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date, and shall be entitled to preference upon the calendar of the court over all other civil actions, except petitions for judicial review under this Chapter and cases arising under the Workers' Compensation Law of this State; or, if any contribution imposed by this Chapter, or any portion thereof, and/or penalties duly provided for the nonpayment thereof shall not be paid within 30 days after the same become due and payable, and after due notice and reasonable opportunity for hearing, the Division, under the hand of the Assistant Secretary, may certify the same to the clerk of the superior court of the county in which the delinquent resides or has property, and additional copies of said certificate for each county in which the Division has reason to believe the delinquent has property located. If the amount of a delinquency is less than fifty dollars (\$50.00), the Division may not certify the amount to the clerk of court until a field tax auditor or another representative of the Division personally contacts, or unsuccessfully attempts to personally contact, the delinquent and collect the amount due. A certificate or a copy of a certificate forwarded to the clerk of the superior court shall immediately be docketed and indexed on the cross index of judgments, and from the date of such docketing shall constitute a preferred lien upon any property which said delinquent may own in said county, with the same force and effect as a judgment rendered by the superior court. The Division shall forward a copy of said certificate to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division, and when so forwarded and in the hands of such sheriff or agent of the Division, shall have all the force and effect of an execution issued to such sheriff or agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, the Division may in its discretion withhold the issuance of said certificate or execution to the sheriff or agent of the Division for a period not exceeding 180 days from the date upon which the original certificate is certified to the clerk of superior court. The Division is further authorized and empowered to issue alias copies of said certificate or

execution to the sheriff or sheriffs of such county or counties, or to a duly authorized agent of the Division in all cases in which the sheriff or duly authorized agent has returned an execution or certificate unsatisfied; when so issued and in the hands of the sheriff or duly authorized agent of the Division, such alias shall have all the force and effect of an alias execution issued to such sheriff or duly authorized agent of the Division by the clerk of the superior court upon a judgment of the superior court duly docketed in said county. Provided, however, that notwithstanding any provision of this subsection, upon filing one written notice with the Division, the sheriff of any county shall have the sole and exclusive right to serve all executions and make all collections mentioned in this subsection and in such case no agent of the Division shall have the authority to serve any executions or make any collections therein in such county. A return of such execution, or alias execution, shall be made to the Division, together with all moneys collected thereunder, and when such order, execution, or alias is referred to the agent of the Division for service the said agent of the Division shall be vested with all the powers of the sheriff to the extent of serving such order, execution or alias and levying or collecting thereunder. The agent of the Division to whom such order or execution is referred shall give a bond not to exceed three thousand dollars (\$3,000) approved by the Division for the faithful performance of such duties. The liability of said agent shall be in the same manner and to the same extent as is now imposed on sheriffs in the service of executions. If any sheriff of this State or any agent of the Division who is charged with the duty of serving executions shall willfully fail, refuse, or neglect to execute any order directed to him by the said Division and within the time provided by law, the official bond of such sheriff or of such agent of the Division shall be liable for the contributions, penalty, interest, and costs due by the employer. Any judgment that is executable and allowed under this section shall be subject to attachment and garnishment under G.S. 1-359(b) in payment of unpaid taxes that are due from the employer and collectable under this Article.

- (2) Any representative of the Division may examine and copy the county tax listings, detailed inventories, statements of assets or similar information required under General Statutes, Chapter 105, to be filed with the tax supervisor of any county in this State by any person, firm, partnership, or corporation, domestic or foreign, engaged in operating any business enterprise in such county. Any such information obtained by an agent or employee of the Division shall not be divulged, published, or open to public inspection other than to the Division's employees in the performance of their public duties. Any employee of the Division who violates any provision of this section shall be fined not less than twenty dollars (\$20.00), nor more than two hundred dollars (\$200.00), or imprisoned for not longer than 90 days, or both.
- (3) When the Division furnishes the clerk of superior court of any county in this State a written statement or certificate to the effect that any judgment docketed by the Division against any firm or individual has been satisfied and paid in full, and said statement or certificate is signed by the Secretary of Commerce and attested by the Assistant Secretary, with the seal of the Division affixed, it shall be the duty of the clerk of superior court to file said certificate and enter a notation thereof on the margin of the judgment docket

to the effect that said judgment has been paid and satisfied in full, and is in consequence canceled of record. The cancellation shall have the full force and effect of a cancellation entered by an attorney of record for the Division. It shall also be the duty of such clerk, when any such certificate is furnished him by the Division showing that a judgment has been paid in part, to make a notation on the margin of the judgment docket showing the amount of such payment so certified and to file said certificate. This paragraph shall apply to judgments already docketed, as well as to the future judgments docketed by the Division. For the filing of said statement or certificate and making new notations on the record, the clerk of superior court shall be paid a fee of fifty cents (50¢) by the Division.

(c) Priorities under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes, and claims for remuneration of not more than two hundred and fifty dollars (\$250.00) to each claimant, earned within six months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64(a) of that act (U.S.C., Title 11, section 104(a)), as amended.

A receiver of any covered employer placed into an operating receivership pursuant to an order of any court of this State shall pay to the Division any contributions, penalties or interest then due out of moneys or assets on hand or coming into his possession before any such moneys or assets may be used in any manner to continue the operation of the business of the employer while it is in receivership.

(d) Collections of Contributions upon Transfer or Cessation of Business. – The contribution or tax imposed by G.S. 96-9.2, and subsections thereunder, of this Chapter shall be a lien upon the assets of the business of any employer subject to the provisions hereof who shall lease, transfer or sell out his business, or shall cease to do business and such employer shall be required, by the next reporting date as prescribed by the Division, to file with the Division all reports and pay all contributions due with respect to wages payable for employment up to the date of such lease, transfer, sale or cessation of the business and such employer's successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said contributions due and unpaid until such time as the former owner or employer shall produce a receipt from the Division showing that the contributions have been paid, or a certificate that no contributions are due. If the purchaser of a business or a successor of such employer shall fail to withhold purchase money or any money due to such employer in consideration of a lease or other transfer and the contributions shall be due and unpaid after the next reporting date, as above set forth, such successor shall be personally liable to the extent of the assets of the business so acquired for the payment of the contributions accrued and unpaid on account of the operation of the business by the former owner or employer.

(e) Refunds. – If not later than five years from the last day of the calendar year with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employer or employing unit who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund, and the Division shall determine that such contributions or any portion thereof was erroneously collected, the Division shall allow such employer or employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if

such an adjustment cannot be made in the next succeeding calendar quarter after such application for such refund is received, a cash refund may be made, without interest, from the fund: Provided, that any interest refunded under this subsection, which has been paid into the Special Employment Security Administration Fund established pursuant to G.S. 96-5(c), shall be paid out of such fund. For like cause and within the same period, adjustment or refund may be so made on the Division's own initiative. Provided further, that nothing in this section or in any other section of this Chapter shall be construed as permitting the refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. In any case, where the Division finds that any employing unit has erroneously paid to this State contributions or interest upon wages earned by individuals in employment in another state, refund or adjustment thereof shall be made, without interest, irrespective of any other provisions of this subsection, upon satisfactory proof to the Division that such other state has determined the employing unit liable under its law for such contributions or interest.

(f) No injunction shall be granted by any court or judge to restrain the collection of any tax or contribution or any part thereof levied under the provisions of this Chapter nor to restrain the sale of any property under writ of execution, judgment, decree or order of court for the nonpayment thereof. Whenever any employer, person, firm or corporation against whom taxes or contributions provided for in this Chapter have been assessed, shall claim to have a valid defense to the enforcement of the tax or contribution so assessed or charged, such employer, person, firm or corporation shall pay the tax or contribution so assessed to the Division; but if at the time of such payment he shall notify the Division in writing that the same is paid under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Division; and if the same shall not be refunded within 90 days thereafter, he may sue the Division for the amount so demanded; such suit against the Division must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides, or in the county where the taxpayer conducts his principal place of business; and if, upon the trial it shall be determined that such tax or contribution or any part thereof was for any reason invalid, excessive or contrary to the provisions of this Chapter, the amount paid shall be refunded by the Division accordingly. The remedy provided by this subsection shall be deemed to be cumulative and in addition to such other remedies as are provided by other subsections of this Chapter. No suit, action or proceeding for refund or to recover contributions or payroll taxes paid under protest according to the provisions of this subsection shall be maintained unless such suit, action or proceeding is commenced within one year after the expiration of the 90 days mentioned in this subsection, or within one year from the date of the refusal of the Division to make refund should such refusal be made before the expiration of said 90 days above mentioned. The one-year limitation here imposed shall not be retroactive in its effect, shall not apply to pending litigation nor shall the same be construed as repealing, abridging or extending any other limitation or condition imposed by this Chapter.

(g) Upon the motion of the Division, any employer refusing to submit any report required under this Chapter, after 10 days' written notice sent by the Division by registered or certified mail to the employer's last known address, may be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such report is properly submitted. When an execution has been returned to the Division unsatisfied, and the employer, after 10 days' written notice sent by the Division by registered or certified mail to the employer's last known address, refuses to pay the contributions covered by the execution, such employer shall upon the motion of the Division be enjoined by any court of competent jurisdiction from hiring and continuing in employment any employees until such contributions have been paid.

An employer who fails to file a report within the required time shall be assessed a late filing penalty of five percent (5%) of the amount of contributions due with the report for each month or fraction of a month the failure continues. The penalty may not exceed twenty-five percent (25%) of the amount of contributions due. An employer who fails to file a report within the required time but owes no contributions shall not be assessed a penalty unless the employer's failure to file continues for more than 30 days.

(h) When any uncertified check is tendered in payment of any contributions to the Division and such check shall have been returned unpaid on account of insufficient funds of the drawer of said check in the bank upon which same is drawn, a penalty shall be payable to the Division, equal to ten percent (10%) of the amount of said check, and in no case shall such penalty be less than one dollar (\$1.00) nor more than two hundred dollars (\$200.00).

(i) Except as otherwise provided in this subsection, no suit or proceedings for the collection of unpaid contributions may be begun under this Chapter after five years from the date on which the contributions become due, and no suit or proceeding for the purpose of establishing liability and/or status may be begun with respect to any period occurring more than five years prior to the first day of January of the year within which the suit or proceeding is instituted. This subsection shall not apply in any case of willful attempt in any manner to defeat or evade the payment of any contributions becoming due under this Chapter. A proceeding shall be deemed to have been instituted or begun upon the date of issuance of an order by the Board of Review directing a hearing to be held to determine liability or nonliability, and/or status under this Chapter of an employing unit, or upon the date notice and demand for payment is mailed by certified mail to the last known address of the employing unit. The order shall be deemed to have been issued on the date the order is mailed by certified mail to the last known address of the employing unit. The running of the period of limitations provided in this subsection for the making of assessments or collection shall, in a case under Title II of the United States Code, be suspended for the period during which the Division is prohibited by reason of the case from making the assessment or collection and for a period of one year after the prohibition is removed.

(j) Waiver of Interest and Penalties. – The Division may, for good cause shown, reduce or waive any interest assessed on unpaid contributions under this section. The Division may reduce or waive any penalty provided in G.S. 96-10(a) or G.S. 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

- (1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;
- (2) Destruction of the employer's place of business or business records by fire or other casualty;
- (3) Failure of the Division to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;
- (4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Division upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted

- to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;
- (5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and
 - (6) Other circumstances where, in the opinion of the Secretary, Assistant Secretary, or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the Secretary, Assistant Secretary, or their designees, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances.

The waiver or reduction of interest or a penalty under this subsection shall be valid and binding upon the Division. The reason for any reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies. (Ex. Sess. 1936, c. 1, s. 14; 1939, c. 27, ss. 9, 10; 1941, c. 108, ss. 14-16; 1943, c. 377, ss. 24-28; 1945, c. 221, s. 1; c. 288, s. 1; c. 522, ss. 17-20; 1947, c. 326, ss. 18-20; c. 598, s. 9; 1949, c. 424, ss. 14-16; 1951, c. 332, ss. 8, 20; 1953, c. 401, s. 15; 1959, c. 362, s. 9; 1965, c. 795, s. 11; 1971, c. 673, s. 21; 1973, c. 108, s. 43; c. 172, s. 4; 1977, c. 727, s. 50; 1979, c. 660, s. 16; 1981, c. 160, s. 16; 1989, c. 770, s. 21; 1991, c. 422, s. 1; 1995, c. 463, ss. 4-6; 1997-398, ss. 1-3; 2001-207, ss. 2, 3; 2005-276, s. 6.37(k); 2007-491, s. 44(1)a; 2011-401, s. 2.9; 2013-224, ss. 9, 20(d); 2015-238, s. 2.5(b).)